

UNITED STATES BANKRUPTCY COURT  
FOR THE  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

<b>In re:</b>	:	
<b>MARIETTA CHEEKS</b>	:	<b>Chapter 13</b>
<b>Debtor</b>	:	<b>Case No. 19-10516-BFK</b>
	:	
<b>U.S. Bank National Association</b>	:	
<b>Plaintiff</b>	:	
	:	<b>Relief From Stay</b>
<b>v.</b>	:	<b>Contested Matter</b>
	:	<b>No.</b>
<b>Marietta Cheeks</b>	:	
<b>Debtor</b>	:	
	:	
<b>Thomas Gorman</b>	:	
<b>Trustee</b>	:	
<b>Respondents</b>	:	
	:	

**DEBTORS ANSWER TO MOTION FOR ORDER CONFIRMING ABSENCE  
OF AUTOMATIC STAY OR IN THE ALTERNATIVE FOR NUNC PRO  
TUNC RELIEF FROM THE AUTOMATIC STAY AND CO-DEBTOR STAY**

Debtor, through undersigned counsel, responds to the Motion for Order Confirming Absence of the Automatic Stay or in the alternatice for *Nunc pro Tunc* Relief from the Automatic Stay filed herein by U.S. Bank National Associationas follows:

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Nathan Fisher  
Fisher-Sandler, LLC  
3977 Chain Bridge Rd., #2  
Fairfax, VA 22030  
VSB #37161  
(703) 691-1642

- 1. The allegations of paragraphs 1, 2, 3, 4, 5, 9 and 11 and are admitted.**
- 2. The Debtor is unable to admit or deny the allegations of paragraphs 6, 7, 10, 12, 13, 14, 15 and 16 and therefore denies same.**
- 3. The allegations of paragraphs 8, 17 and 18 are denied.**
- 4. The subject property in this case, located at 17160 Belle Isle Drive, Dumfries, VA 22026 has approximately \$400,000.00 in equity. The purchase price was \$859,000.00 in 2015; mortgage debt on the property is approximately \$450,000.00.**
- 5. Legal title to the subject property is in the name of Frederick Cheeks, the spouse of the Debtor.**
- 6. It was the intent of the parties to have the property titled in the name of both husband and wife, as Tenants-by-the-Entirety, when the subject property was purchased in 2015.**
- 7. When filing this Chapter 13 case, the Debtor believed she was on the Deed to the property and that the property was held as Tenants-by-the-Entirety.**
- 8. Nevertheless, the debtor asserts an equitable interest in the \$400,000.00 in marital equity in the subject property.**
- 9. Notice of the bankruptcy filing was provided to U.S. Bank National Association and its' attorneys prior to the foreclosure sale on February 19, 2019. The notice of bankruptcy filing was completely ignored.**

**10. Property of the bankruptcy estate per 11 U.S.C. 541(a)(1) includes “all legal or equitable interests of the debtor in property as of the commencement of the case”.**

**11. Bankruptcy Code Section 11 U.S.C. Section 362(a)(3) provides that the automatic stay applies to “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate”.**

**12. It is not the right of U.S. Bank National Association to unilaterally make a determination as to whether or not the Automatic Stay is in effect when they have notice of a bankruptcy filing; U.S. Bank National Association, upon having knowledge of the bankruptcy filing in this case, had a simple remedy which was to file a Motion for Relief from Stay in the United States Bankruptcy Court so that a judicial determination could be made on the issue.**

**12. The foreclosure on the subject property was a violation of the Automatic Stay.**

**WHEREFORE, the Debtor prays that the Movant’s Motion be DENIED, and for such other relief as this Court deems appropriate.**

**Dated: April 3, 2019**

**Respectfully Submitted  
Marietta Cheeks  
By Counsel:  
/s/ Nathan Fisher  
Nathan Fisher  
3977 Chain Bridge Rd., #2  
Fairfax, VA 22030  
(703) 691-1642**

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY that on this 3rd day of April, 2019, I served the foregoing, via first-class mail, on the following, who are all necessary parties under Local Rule 4001(a)-1(E)(1):**

**Thomas Gorman  
300 N. Washington St.,  
Suite 400  
Alexandria, VA 22314**

**Marietta Cheeks  
17160 Belle Isle Drive  
Dumfries, VA 22026**

**M. Christine Maggard, Esq.  
Brock & Scott, PLLC  
484 Viking Drive, Ste. 100  
Virginia Beach, VA 23452**

**/s/ Nathan Fisher  
Nathan Fisher**